

13077-E
(3)
L-0387
10/26/82

RECORDATION NO. 13077-E
FEB 24 1983 - 2 52 PM
INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT, dated as of and effective as of April 15, 1982 (hereinafter called the "Assignment"), by and between **ITEL CORPORATION**, a Delaware corporation (together with its successors and assigns, being hereinafter called "Itel"), and **PROVIDENCE AND WORCESTER COMPANY**, a Delaware corporation by and through its authorized agent, Itel.

WHEREAS, Itel and First Security Bank of Utah, N.A., as Trustee, a national banking association, incorporated and existing under the law of the United States of America (hereinafter called the "Trustee"), have entered into an Equipment Trust Agreement, dated as of November 1, 1978 (the Equipment Trust Agreement, together with any amendments or supplements thereto, being hereinafter called the "Agreement"); and

WHEREAS, Itel and the Providence and Worcester Company (hereinafter called "P&W") entered into a lease of Equipment (as defined in the Agreement), dated as of September 1, 1978 (the lease, together with any amendments or supplements thereto, being hereinafter called the "P&W Lease"), providing for the leasing by Itel to P&W of certain units of the Trust Equipment (as defined in the Agreement); and

WHEREAS, the P&W Lease may also cover the leasing to P&W of other Equipment not included as part of the Trust Equipment; and

WHEREAS, in order to provide security for the obligations of Itel under the Agreement, Itel assigned to Trustee for security purposes all of Itel's rights, title and interest in, to and under the P&W Lease as and only to the extent that the P&W Lease relates to the Trust Equipment by means of six documents, each entitled Assignment of Lease and Agreement, three of which are dated December 28, 1978, two of which are dated March 22, 1979 and one of which is dated September 1, 1978; and

WHEREAS, by an agreement dated as of September 12, 1980 (hereinafter called the "Agency Agreement"), P&W appointed Itel as its agent, with respect to certain units of Trust Equipment under the P&W Lease, bearing reporting marks PW 105301-105600 and PW 105701-105800, (hereinafter the "Agency Equipment") to enter into one or more sublease agreements with third parties covering some or all of the Agency Equipment; and

WHEREAS, under the Agency Agreement, as clarified by letter (hereinafter the "Fee Letter") from P&W to Itel, dated September 12, 1980, Itel shall receive all rentals generated by the Agency Equipment pursuant to any sublease agreement as a fee for acting as P&W's agent; and

WHEREAS, the Agency Agreement operates to assign to Itel; (1) certain rights under the P&W Lease which would otherwise accrue to and only to P&W, including, inter alia, rentals reserved to the P&W, and (2) certain rights under the P&W Lease which would otherwise ultimately accrue to Itel as lessor under the P&W Lease, including, inter alia, rentals to be paid under the P&W Lease; and in order to (a) more specifically identify the existing security for the obligations of Itel under the Agreement as

previously assigned by means of the six documents described above, and (b) provide further security for the obligations of Itel under the Agreement, Itel, by means of a document entitled Assignment of Agreement dated as of January 8, 1981, assigned for security purposes only its rights in, to and under the Agency Agreement, including, but not limited to, its rights to act as P&W's agent and receive rentals generated by the Agency Equipment, to the Trustee as and only to the extent that the Agency Agreement relates to the Trust Equipment; and

WHEREAS, by means of the Agency Agreement, Itel, as agent for P&W, and Southern Pacific Transportation Company and St. Louis Southwestern Railway Company (hereinafter collectively called "SP") entered into a sublease agreement dated as of February 25, 1981 (such sublease, together with any amendments or supplements thereto, being hereinafter called the "SP Sublease") pursuant to which two hundred eight-five (285) units of Agency Equipment were subleased to SP; and

WHEREAS, pursuant to Section 2 thereof, the SP Sublease has expired with respect to the Agency Equipment bearing road marks within the series SP 105301 through SP 105800 (such Agency Equipment hereinafter being called the "SP Terminated Equipment"); and

WHEREAS, Itel and Detroit, Toledo and Ironton Railroad Company (hereinafter called "DTI") entered into a lease of Trust Equipment dated March 10, 1981 (hereinafter called the "DTI Lease") providing for the leasing by Itel to DTI of certain units of Trust Equipment; and

WHEREAS, pursuant to Amendment No. 2 to the DTI Lease, dated as of April 15, 1982, and the Agency Agreement, Itel, as agent for P&W, added the following twenty-two (22) units of Trust Equipment to the DTI Lease: (i) seven (7) units of Agency Equipment and (ii) fifteen (15) units of SP Terminated Equipment (such twenty-two units being hereinafter called the "Flatcars"); and

WHEREAS, in order to continue to provide security for the obligations of P&W under the P&W Lease and the Agency Agreement, as clarified by the Fee Letter (hereinafter the "Clarified Agency Agreement"), P&W agrees to assign to Itel, for security purposes only, P&W's rights in, to and under the DTI Lease as and only to the extent that the DTI Lease relates to the Flatcars.

NOW, THEREFORE, in consideration of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

- I. P&W hereby assigns, transfers and sets over unto the Itel, as collateral security for the payment and performance of P&W's obligations under the P&W Lease, and the Clarified Agency Agreement, all of P&W's right, title and interest, powers, privileges and other benefits under the DTI Lease as and only to the extent that the DTI Lease relates to the Flatcars set forth in Annex I hereto, including, without limitation, all rights to receive and collect all rentals, profits and other sums payable to or receivable by P&W from DTI under or pursuant to the provisions of the DTI Lease to the extent that the same are payable in respect of the Flatcars, whether as rent, casualty payment, indemnity, liquidated damages or otherwise (the monies being hereinafter called the Payments); PROVIDED, HOWEVER, that until an Event of Default under the P&W Lease or the Clarified Agency Agreement, or any event which, with notice or lapse of time or both, could constitute the an Event of Default, shall occur, it is understood that P&W shall be entitled to collect and receive all the Payments and to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified

in the DTI Lease, and to apply all Payments to which P&W is entitled to the payment of any and all of P&W's obligations under the P&W Lease and the Clarified Agency Agreement and to retain the balance, if any. In furtherance of the foregoing assignment, but subject to the foregoing provisions of this paragraph, P&W hereby irrevocably authorizes and empowers Itel in its own name, or in the name of its nominee, or in the name of P&W, or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which P&W is or may become entitled under the DTI Lease, and to enforce compliance by P&W with all the terms and provisions thereof. Whenever the DTI Lease covers other equipment not included as part of the Trust Equipment and the amount of any payment due to P&W under the Lease as car hire payments (including both straight and incentive per diem), mileage charges or other rental revenues is calculated on an aggregate basis for all equipment leased thereunder, for the purposes of this Assignment an amount equal to the Assigned Fraction (as hereinafter defined) of each the payment shall be deemed to be payable with respect to the Flatcars leased under the Lease. The term "Assigned Fraction" as used herein shall mean a fraction the numerator of which shall be the number of units of equipment comprising the Flatcars leased under the Lease and the denominator of which shall be the aggregate number of units of equipment (including the Flatcars) at the time leased under the Lease.

2. This Assignment is executed only as security for the obligations of P&W under the P&W Lease and the Clarified Agency Agreement, and therefore, the execution and delivery of this Assignment shall not subject Itel to, or transfer, or pass, or in any way affect or modify, the liability of P&W under the DTI Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of P&W to DTI shall be and remain enforceable by DTI, its successor and assigns, against, and only against P&W, or persons other than Itel.
3. To protect the security afforded by this Assignment, P&W agrees as follows:
 - (a) P&W will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the DTI Lease provides is to be performed by P&W.
 - (b) At the sole cost and expense of P&W, P&W will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of P&W, under the DTI Lease.
 - (c) Should P&W fail to make any payment or to do any act which this Assignment requires P&W, to make or do, then Itel, but without obligation so to do, after first making written demand upon P&W, and affording P&W a reasonable period of time within which to make the payment or do the act, but without releasing P&W from any obligation hereunder, may make or do the same in the manner and to the extent as Itel may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of Itel, and also the right to perform and discharge each and every obligation, covenant and agreement of P&W

contained in the DTI Lease; and in exercising any the powers, Itel may pay necessary costs and expense, employ counsel and incur and pay reasonable attorneys' fees, and P&W will reimburse Itel for the costs, expenses and fees.

4. Upon the full discharge and satisfaction of all of P&W's obligations under the P&W Lease and the Clarified Agency Agreement, and this Assignment, all rights herein assigned to Itel shall terminate, and all estate, right, title and interest of Itel in and to the DTI Lease shall revert to P&W.
5. P&W will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by Itel in order to confirm or further assure, the interests of Itel hereunder.
6. If an Event of Default shall occur and be continuing under the P&W Lease and the Clarified Agency Agreement, Itel may assign all or any of the rights assigned to it hereby or arising under the DTI Lease, including without limitation, the right to receive any Payments due or to become due. In the event of any the assignment, any the subsequent or successive assignee or assignees shall, to the extent of the assignment, enjoy all the rights and privileges and be subject to all the obligations of Itel hereunder. Itel will give written notice to P&W and the Lessee of any the assignment.
7. This Assignment shall be governed by the laws of the state of Utah, but the parties shall be entitled to all rights conferred by the laws of the United States permitting filing with the Interstate Commerce Commission.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names, by officers thereunto duly authorized, and their respective seals to be affixed and duly attested, all as of the date first above written.

ITEL CORPORATION

By: 
President, Rail Division

Date: 11-18-82

ITEL CORPORATION, as authorized agent for
PROVIDENCE AND WORCESTER COMPANY

By: 
Authorized Officer

Date: 11-19-82

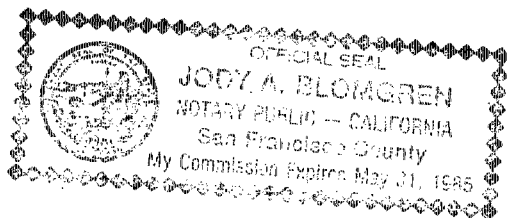
L-0387

ANNEX I

<u>Previous Reporting Marks</u>		<u>Current Reporting Marks</u>	
PW	105515	DTI	90200
	105548		90201
	105555		90202
	105706		90203
	105785		90204
	105791		90205
	105799		90206
SP	105318	DTI	90207
	105326		90208
	105355		90209
	105371		90210
	105384		90211
	105386		90212
	105416		90213
	105425		90214
	105433		90215
	105447		90216
	105549		90217
	105463		90218
	105497		90219
	105527		90220
	105556		90221

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO) ss:

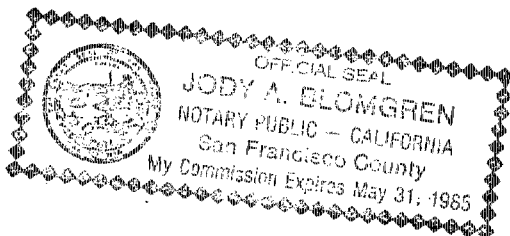
On this 18th day of November, 1982, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of Itel Corporation, Rail Division, that the foregoing Assignment was signed on behalf of said corporation by authority of its Board of Directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Jody A. Blomgren
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO) ss:

On this day 18th of November, 1982, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President, Rail Division of ITEL CORPORATION, an authorized agent for PROVIDENCE AND WORCESTER COMPANY, that the foregoing Assignment was signed on behalf of Itel Corporation, by authority of its Board of Directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Jody A. Blomgren
Notary Public